

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

No. 6:20-cv-00344

**Johnny Len Kellogg,**  
*Plaintiff,*

v.

**Maxey Cerliano,**  
*Defendant.*

**ORDER**

On June 23, 2020, plaintiff filed suit alleging that a letter from a law firm addressed to the plaintiff Johnny Kellogg was opened outside of his presence by the Gregg County sheriff's office receptionist. Doc. 1. His case was referred to United States Magistrate Judge John D. Love. Doc. 3.


On June 26, 2020, the magistrate judge entered a report recommending that plaintiff's suit be dismissed with prejudice for purposes of proceeding in forma pauperis as frivolous for failure to state a claim upon which relief may be granted. Doc. 5. The report concluded that the opening of a prisoner's mail outside of his presence is not a constitutional violation. *Id.*

The plaintiff filed objections to the report arguing that the opening of his legal mail violated jail policy, the receptionist knew that the letter was from a law firm, the officers who answered his grievance tried to cover up the incident, and that the sheriff is responsible for the actions of his employees. Doc. 9. His objections did not address the magistrate judge's determination that the incident did not rise to the level of a constitutional violation. *Id.* Nevertheless, the court will construe plaintiff's objections as contesting the magistrate judge's determination that the opening of a prisoner's legal mail is not a constitutional violation.

When a party objects to a magistrate's report, the district court reviews its findings and recommendation *de novo*. 28 U.S.C. § 636(b)(1)(C). Upon *de novo* review of the report, the court finds that the magistrate judge's findings and recommendation should be accepted. Plaintiff cites no cases holding the alleged actions violate constitutional rights, and as the magistrate judge correctly reported, the Fifth Circuit has held the opposite. *See Brewer v. Wilkinson*, 3 F.3d 816, 820 (5th Cir. 1993) (holding that a violation of prison regulations requiring that a prisoner be present when his incoming legal mail is opened and inspected is not a violation of the prisoner's constitutional rights).

Accordingly, the court **accepts** the magistrate judge's report and recommendation. This action is **dismissed with prejudice** for the purposes of proceeding in forma pauperis as frivolous and for failure to state a claim upon which relief may be granted.

*So ordered by the court on November 6, 2020.*

  
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J. CAMPBELL BARKER  
United States District Judge